SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

No. 776

THE NATIONAL COMMITTEE OF GIBRAN, also known as THE COMITE NATIONAL DE GIBRAN, representing the Town of Becharre, Lebanon,

Petitioner,

v.

GEORGE G. SHIYA,

Respondent.

MEMORANDUM IN OPPOSITION TO THE MOTION OF THE REPUBLIC OF LEBANON FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

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The respondent, George G. Shiya, answering and opposing the motion of the Republic of Lebanon seeking leave to file a brief *amicus curiae* and also seeking permission to file a brief in support of the petition.

The asserted interest on the part of the Republic of Lebanon does not warrant granting permission to file a brief in support of the petition. That interest is solely limited to a repetition of the claim made in the petition that, although the Shiya retainer was reasonable and conscionable when made, because of the unforeseen increase in the value of the renewal copyrights, Mr. Shiya should not have the right to enjoy the fruits of the retainer.

POINT I

The public interest of Lebanon did not exist at the time the retainer was made. If a public interest had existed, the construction of the retainer by determining the intent of the parties, as was done by the courts below, precludes applicability of any secondary rule of contract construction.

The assertion that the retainer should be construed in favor of the petitioner although both courts below have found that the intent of the parties to the retainer accords with Mr. Shiya's claim, perhaps is best refuted by a reference to the quotation made by the Republic of Lebanon on page 10 of its brief. At that page, it quotes from Corbin on Contracts (1960 ed.) chapter 24, Section 550, pp. 194-196. Seemingly, the writer of the Lebanon brief realized that the contract made between Mr. Shiya and the petitioner did not actually involve the Government of Lebanon when it was made for without advising the Court of the omission, the writer of the brief excluded from the middle of the quoted paragraph the following important sentence:

> "* * * In order to regard it as truly a rule of interpretation, when applied to a transaction in which government is not itself a party, we must make an assumption that persons who are contracting as to their private interests also have in mind the public interest."

As proof that the interest of the Government of Lebanon was not involved when the retainer was made, and that the petitioner had its own interest in mind, we submit the following:

1. The conclusion of Judge Ryan (113b). After hearing the testimony concerning the personal attempts by Rahme, the lawyer and others in Becharre to control the Gibran funds, was caused to state,

> "(1576) The Court: Well, I think that it is a tragedy that this controversy has arisen as to how this

money should be spent which Gibran intended should be used for charitable purposes in connection with his native village. It might (sic) presumptuous on my part to even suggest it, but it seems to me that this is a matter in which the government perhaps might well step in and see that the fund is administered to accomplish the purpose that the testator intended.

My own reaction is that when we determine what the fee is to be which is to be allowed to the petitioner herein, that any other funds which are in control of the Court be paid directly to the Town of Becharry in care of the Ambassador of Lebanon, who has been recognized as the representative of that country here in the United States of America, and let him determine who should get it rather than trifling around with these committees."

2. It was only in September, 1967, after Judge Ryan decided that the varied committees of Gibran should not be trusted with the Gibran funds and insisted that the moneys held by the Southern District Court go to the Lebanese Ambassador to the United States, that the Government of Lebanon took any steps to control the use of the Gibran royalties.

The obvious intent on the part of the government in Lebanon is to arouse sympathy in this Court for the petitioner's position.

It is respectfully submitted that if the assertions in Lebanon's brief were germane to the litigation, they should have been presented as evidence at the time of the trial before Judge Ryan or brought to the attention of the Court of Appeals. The place for testing of bald assertions is at the trial stage when the parties have an opportunity to test possible relevance and competence.

3. Although the Lebanese Consul General in New York consulted Mr. Shiya prior to the signing of the 1953 re-

tainer and although the same New York Consul General, Mr. Shebea, himself a lawyer of note in Lebanon, acted with Dr. Basile, the attorney-in-fact for the Committee in "convincing" Mr. Shiya to reduce his percentage of the total renewal royalties from 35 to 25% (52b-69b) the Government of Lebanon did not think its interest of sufficient import at the time of the trial of this case to produce Mr. Shebea, who at the time of trial was still in the employ of the Government of Lebanon, to testify concerning the conversations among Mr. Shiya and Dr. Basile and himself prior to the signing of the 1956 retainer. Both Mr. Shiya and Dr. Basile testified that all parties at that time understood Mr. Shiya was to have 25% of the total recovery. It is obvious that Consul General Shebea was not brought to the trial because the Republic of Lebanon had no interest in what committees of Gibran or what persons controlled and used the Gibran funds for the many years preceding Judge Ryan's order.

POINT II

The rule of construction concerning public interest presented by the Republic of Lebanon is similar to the position of the petitioner concerning interpretation of contracts against the maker. In presenting that view, the petitioner does not need the aid of the Republic of Lebanon.

Both the rule claimed as relevant by the Republic of Lebanon and that espoused by the petitioner are similar. Both are secondary rules of contract interpretation. Both must await application until the contract has been construed to determine, if possible, the actual intent of the parties. In this case, the only persons who negotiated the contract testified that it had the same meaning. Dr. Basile, the attorney-in-fact for the committee, testified that the 1953 retainer resulted after "The response of the Commit-

tee after full discussion and decision was to the effect that it was their preference that I retain Mr. Shiya on a contingent basis of 35 per cent of all sums which Mr. Shiya's efforts might eventually bring to the Town of Becharry, less disbursements." (43b) and also testified (36b) that at no time during his conversations with Mr. Shebea, the Lebanese Consul General (re: the 1956 amendment), was there any discussion about limiting the moneys to the percentage held in Court at any time.

The other person to this contract, Mr. Shiya testified (63b) in answer to a question put to him by Judge Ryan,

> "I was asked, if your Honor please, on what the percentage did I require (sic) would be based, and I stated that it would be based on the full value of the renewal copyrights for the next 28 years, inasmuch as I said as that was the subject of the litigation in the complaint and in the controversy between Mary Gibran and the Committee."

The above testimony of both Mr. Shiya and Dr. Basile was uncontradicted. Certainly, if parties to a contract agree on their intent, and any ambiguity is thus resolved, then secondary rules of interpretation as set forth by the petitioner and the Government of Lebanon never come into play.

Conclusion

It is respectfully submitted that the application of the Government of Lebanon to file a brief *amicus curiae* should be denied. The position of the petitioner is fully covered by the extensive brief in support of granting the writ and the interest and brief of the Government of Lebanon adds nothing significant to that position. Accordingly, because of the matters set forth in the brief in opposition to the

petition for the writ and the matters set forth in this memorandum, it is respectfully submitted that there is no reason for the granting of the writ of certiorari and it should be denied.

Respectfully submitted,

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